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# Special Report on the MMR Lease Extension



GOVERNMENT DOCUMENTS  
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June 1998

Scott Harshbarger  
Attorney General  
Commonwealth of Massachusetts



# SPECIAL REPORT ON THE MMR LEASE EXTENSION

Massachusetts Office of the Attorney General

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## INTRODUCTION

Cape Cod citizens and officials have asked our office to look further into the extension of the Air Force's Massachusetts Military Reservation ("MMR") lease, which was granted by then-Governor Weld in 1995. The existence of this ten-year extension came to light this past April, when an officer in the Adjutant General's office informed us that the Air Force's lease runs through 2026, rather than through 2016, as we had previously believed. This revelation was a surprise to the Attorney General's office and to members of the public.

Specifically, citizens and officials have asked for further information about the process by which the lease was extended, and also whether there is any way now to invalidate the extension. Because the lease extension issue is a matter of public significance, we have decided to address it in this special report. In July, we will separately release Phase II of our "Report on Legal Control Over Land Use at the MMR," which will focus on the procedures that will have to be followed to implement plans for the future use of the base.

Records we have obtained from the Air Force, the Division of Capital Planning and Operations ("DCPO"), and the Massachusetts National Guard suggest that:

- state military officials knew that the public and our office would be interested in the extensions of the Air Force lease and the Massachusetts National Guard license;
- these officials nonetheless failed to inform the public and our office of their renewed request for a lease extension;
- Massachusetts National Guard officials continued to use the construction of a new wastewater treatment plant for the base as a justification for the extension, even after the treatment plant project had been specifically exempted from a federal requirement that would have made the extension a prerequisite to construction;
- there is no evidence that the Commonwealth sought or received anything in exchange for the extension; and



- by granting the extension without obtaining environmental *quid pro quòs* or other concessions, the Administration lost a significant opportunity to assert the Commonwealth's interests.

Copies of selected documents relating to the lease extension are included as an appendix to this report.

Despite the fundamental unfairness of the process used to grant the extension, we have concluded that the lack of an Attorney General's office signature on the document, and the filing of the earlier fail-safe request by Cape Cod citizens, do not by themselves invalidate the extension. We conclude that citizens may be able to request environmental review of the extension now by filing a new fail-safe request. But as discussed more fully below, there are reasons why filing such a request now may have limited practical impact. We believe our office's resources will be best used in continuing to assist with the Master Plan process, and in pushing for the implementation of land use plans that are being developed for the future of the base.

## I. HISTORICAL BACKGROUND ON THE LEASE EXTENSION ISSUE

Some time between January 13 and March 2, 1995, then-Governor William Weld signed a document extending the Air Force's lease of state-owned property at the MMR for ten years, through June 30, 2026. On April 11, 1995, the Air Force executed the document, making it effective.<sup>1</sup> This extension lengthened the term of the Air Force lease, while leaving all other terms of the lease unchanged. On January 8, 1997, the license back to the Commonwealth to use the land for Air National Guard purposes was also extended through 2026. The lease extension applies to approximately 2,100 acres of land at Otis Air National Guard Base in the southwestern part of the MMR. The Air National Guard license covers this property plus over 1,000 acres of adjacent, federally owned land.

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<sup>1</sup>We initially believed that the Governor signed the extension on April 11, because that is the date contained in extension itself. Documents from the Massachusetts National Guard revealed, however, that the Governor executed the extension first and sent it to the Air Force for signature.



The request for an extension of the Air Force lease was originally initiated in 1989, apparently in response to a federal requirement relating to construction projects. This requirement, contained in an internal Air Force regulation, states that the Air Force will expend money for construction projects only if the United States owns the site, or has a long-term lease with at least 25 years remaining ("25-year policy"). Before the extension, the Air Force lease was to expire in 2016, so that projects slated to begin later than 1991 would run afoul of the 25-year policy. While this policy appears to have been the original motivation for seeking an extension, the Air Force's and National Guard's first request for an extension of the lease was for a considerably longer period than would have been required to satisfy the 25-year policy -- the first request, initiated in 1990, was for an additional 25-year term, through 2041. On May 1, 1990, the Army Corps of Engineers, acting as real estate broker for the Air Force, forwarded a 25-year extension document to the Massachusetts Military Division, requesting that it be executed by state officials.

By the fall of 1991, the extension request had been passed on to our office for approval as to form. As discussed below, it was until recently state policy for agencies to send lease documents to the Office of the Attorney General for approval. The Army Corps sent a letter to our office on October 24, 1991, asking that we review and approve the extension quickly, and warning that if the extension were not approved by November 15, 1991, the badly needed upgrade of the MMR's wastewater treatment plant would be "canceled." On November 6, our office responded by informing the Army Corps that a lease extension of more than ten years required compliance with the Massachusetts Environmental Policy Act ("MEPA"), including the filing of an Environmental Notification Form ("ENF").

Wishing, for whatever reason, to avoid MEPA review, the Air Force and Massachusetts National Guard then reduced the length of their requested extension to ten years. The Adjutant General wrote to the National Guard Bureau on December 24, 1991 that the request should be reduced to ten years because "[t]his action would not require any environmental filings and provide for a prompt decision by the Commonwealth. . . ." An internal Air Force memorandum dated February 10, 1992 reports that a 25-year extension "cannot be granted because state environmental laws require the prior completion of an environmental notification form," and recommends that the extension term be shortened to ten years. The Air Force agreed to reducing the term of the extension request and forwarded a new extension document to the Adjutant General in April 1992.



When the modified, ten-year request was referred to our office soon afterward, we entered negotiations with the Air Force and Air National Guard, seeking to obtain concessions on environmental issues in exchange for the extension. A memo sent from our office<sup>2</sup> to the National Guard on June 16, 1992 requested a number of *quid pro quos*, including:

- substantive standards for remediating contamination on the property;
- costs of remediation, including past response costs and future operation and maintenance costs;
- costs incurred in conducting any and all natural resource damage assessments in connection with the MMR;
- periodic environmental audits by the United States of operations on the property; and
- fair rental payments for use of the land (the Air Force currently pays only one dollar for the entire term of its lease).

Many Cape Cod citizens became actively involved in seeking a comprehensive environmental review of activities at the MMR as a condition for any extension. After the extension request had been reduced to ten years, bringing it just under the categorical threshold for MEPA review, a group of citizens filed a “fail-safe” request with the Executive Office of Environmental Affairs (“EOEA”) in June 1992, requesting environmental review of the extension. A fail-safe request allows citizens to seek review of a proposed action that is environmentally significant, even if the action does not cross the categorical thresholds for MEPA review. 301 C.M.R. § 11.03(6). A document provided to us by DCPO reveals that state military officials were concerned about the threat posed by the “activists” who filed the fail-safe request. This document, which is not dated but was clearly written in June or July of 1992, when the citizens’ fail-safe request was pending, shows that these officials attempted to rally support to lobby the Secretary of EOEA to deny the request. Ultimately, EOEA never considered the merits of the fail-safe request because the

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<sup>2</sup>This memo is included in the Appendix. The author, David Abromowitz, an attorney with the law firm of Goulston & Storrs, was appointed as a Special Assistant Attorney General to assist in negotiating the lease extension.



military withdrew its extension request in early August 1992. EOEa denied the request as moot on August 20, 1992 because the military had dropped its extension request. In its letter denying the fail-safe request, which was addressed to the Massachusetts National Guard as well as the citizens, EOEa emphasized that the citizens would be free to renew their request if the military again sought an extension. State military officials were thus well aware of citizens' expectations that they would have an opportunity to file another fail-safe request if the military again sought an extension.

From the beginning, the Air Force and Massachusetts National Guard have linked their request for a lease extension to the release of federal funds to construct improvements on the base. As noted above, when the Air Force first sought an extension in 1991, the Army Corps warned that the treatment plant project would be canceled unless the (then 25-year) extension was quickly approved. In the summer of 1992, Guard officials were still using the wastewater treatment plant as leverage to attempt to obtain the extension. Minutes of a Barnstable County Assembly of Delegates meeting on June 17, 1992, and letters from various public organizations demonstrate that the public perceived the extension as an absolute prerequisite to the construction of the wastewater treatment plant. Since the old plant was, in the Air Force's own words, "one of the oldest in the [Department of Defense] inventory" and out of compliance with federal and state requirements, the possibility that the upgrade might not proceed was a matter of serious public concern.

The 25-year policy is not law, however, but merely an internal Air Force requirement, which the Air Force itself can waive. Under pressure from the public for environmental review and from our office for concessions in exchange for any lease extension, the Air Force and Massachusetts National Guard decided that they would waive the 25-year requirement. On July 28, 1992, the Air Force approved the waiver for the treatment plant project. With the waiver granted, the Air Force and Guard no longer needed to obtain a lease extension to proceed with construction of the wastewater treatment plant. They were thus able to withdraw their extension request and avoid the citizens' pending request for environmental review.

In a memo dated August 5, 1992, the Air Force instructed the Army Corps that the extension request should "be held in abeyance until further notification from this office to allow sufficient time to resolve other issues affecting the outcome of this lease extension," and stated that the Air Force would tell the Corps "when the lease extension action is to be resumed." Military officials also informed the public that



the waiver had been granted and that the extension request had been withdrawn. An August 17, 1992 letter from the Air Force to a concerned Cape Cod citizen confirmed that the wastewater treatment plant project would stay on track and that the Guard would therefore “not be pursuing a lease extension at this time.” This was the last our office or the public heard of the issue until April 1998.

## II. HOW THE EXTENSION WAS OBTAINED

While no public notice was ever given, the extension request was renewed less than a year and a half later. On November 24, 1993, the National Guard Bureau instructed Adjutant General Vezina to obtain approval of a ten-year lease extension. The Guard Bureau’s memo suggested that before he took action, Adjutant General Vezina should discuss the issue with Lieutenant Col. Mark Murray and Col. Ernest R. Keating, because they could “provide background information on the previous attempt to extend this lease as well as discuss strategy on how to secure the approval of this request.” The memo also suggested that the extension required review by the Attorney General’s office. There is direct evidence, then, that suggests that the Adjutant General and other high-level members of the Military Division were aware of earlier attempts to obtain the extension, including our office’s involvement and the interest of the public in the issue, and citizens’ expectations that they could seek environmental review if the lease extension request was ever renewed.

The Adjutant General renewed the lease extension request in a letter to DCPO on December 13, 1993. He wrote that an extension was needed in order to satisfy an asserted federal requirement (the 25-year policy) so that funds could be released for unspecified capital improvements. Documents released by DCPO and the Guard show that DCPO officials met and corresponded with officers of the National Guard and Military Division -- including primarily Col. Keating -- to discuss the proposed lease extension from December 1993 through at least April 1994.

The Guard’s justification for the extension continued to be that the military needed 25 years remaining on the Air Force lease to obtain federal construction funding. At various times, the Guard also added the argument that the extension was needed to “even up” the federal leases at the MMR, so that all three (Army, Air Force, and Coast Guard) would expire in 2026. The documents we have received show that DCPO considered the main reason for the extension to be the need to build the wastewater treatment plant upgrade. Internal DCPO memoranda during



this period report that the Guard's main justification of the extension was that they needed at least a 25-year term remaining on their lease in order to release funds to build a wastewater treatment plant at the base. Indeed, an internal memorandum dated December 22, 1993 describes a meeting between DCPO and Col. Keating and informs DCPO's General Counsel that "Col. Keating wishes to construct a new wastewater treatment facility" and that "Col. Keating's problem is that the Feds require site control for at least 30 years before committing federal resources to a capital improvement project." DCPO's documents thus strongly suggest that the Guard's strategy for obtaining the extension was to continue to claim it was needed for the wastewater treatment plant, even though a year and a half earlier, on July 28, 1992, the Air Force had waived this 25-year policy. The DCPO documents also suggest Col. Keating may have mis-characterized the federal policy as a 30-year requirement, and that he never informed DCPO that the Air Force had in fact waived the requirement. Even today, as the response dated June 8, 1998 from DCPO's General Counsel to our request for information indicates, DCPO officials continue to believe the extension was needed to make funding available to build the treatment plant.

While the Air Force had waived the 25-year policy with respect to the treatment plant, two additional planned construction projects were going through environmental review during the summer and fall of 1993: construction of a new medical training facility and of a new facility for a combat communications headquarters. We have received no indication of whether a waiver of the 25-year policy was ever sought or obtained for these projects. In any case, the position of the Adjutant General's office today is that the lease extension was needed so that funding for these two projects could be released.

The Military Reservation Commission ("MRC"), the state entity with jurisdiction over the Commonwealth's land at the MMR, formally approved both extensions on June 7, 1994. The MRC was created by statute in 1935, and currently includes two members: the Adjutant General and the state Quartermaster. A memorandum dated June 7 from Colonel Keating of the Massachusetts National Guard to the Department of Defense ("DoD"), states that the MRC had agreed to the ten-year extension and that Adjutant General Raymond Vezina had forwarded the extension to DCPO for processing. A June 9, 1994 memorandum from the DoD's Air National Guard Readiness Center requested DoD's real estate officials to process the extension of both the Air Force lease and Air National Guard license.



This second memorandum requests that “this action be coordinated with the Adjutant General, Massachusetts, or his/her designee. . . .”

The lease extension document was sent from the Army Corps to Col. Keating and the MRC on August 30, 1994, and sent on to DCPO for approval as to form on September 7. On September 21, DCPO forwarded the extension to then-Governor Weld’s aide Russell Aims, along with a cover memo stating that the extension was formally acceptable. This memo, however, explicitly noted that DCPO was not taking a position on the merits of the extension. In a September 27 memo, Col. Keating asked Adjutant General Vezina for help in encouraging the Governor’s office to act on the extension request.

Apparently, the extension document never reached Aims himself, because on January 11, 1995, Col. Keating sent it to Aims again, followed by a January 13 letter in which Col. Keating said it is “unfortunate” Aims did not receive the document earlier, and urging him to get it signed because it “is affecting a number of other important issues.” On March 2, the Army Corps sent the extension, by now signed by Governor Weld, to the Air Force for execution. On April 11, 1995, the Air Force signed the extension, making it effective.

### III. FINDINGS ON THE LEASE EXTENSION PROCESS

Our examination of the lease and license extensions has so far yielded several conclusions. Our examination has confirmed that the Adjutant General and other officials within the Massachusetts National Guard were involved in the decision to reinitiate the extension requests. The Adjutant General’s office was also centrally involved in actually processing and obtaining the extensions. Further, some of the same Guard officials were involved in both the earlier public extension negotiations in 1992 and the renewal of the request in 1993 and 1994. Indeed, the very same officer who formally reinitiated the processing of the lease extension in June 1994 -- Col. Ernest R. Keating -- was also an addressee of EOEA’s letter denying the citizens’ fail-safe request in 1992. Col. Keating was also involved in discussions with DCPO from December 1993 through the spring of 1994. In a memorandum directing Adjutant General Vezina to reinitiate the lease extension request in late 1993, the National Guard Bureau recommended that he talk first to Col. Keating and Lieutenant Colonel Mark Murray to learn the history of the earlier attempt to obtain



the extension and formulate strategy. There is evidence, then, that the Adjutant General and other state military officials knew that the public and our office would want to know of any extension discussions, and that they nonetheless failed to publicize their renewed extension request. In light of their consistent efforts to avoid MEPA review of the extension, this evidence also suggests that one reason these officials kept the extension from public view was to avoid the possibility that citizens would file another fail-safe request for MEPA review.

There is fairly clear evidence that state military officials and/or the Governor's office made a conscious decision not to involve the Attorney General's office in the extension process. It was formerly state policy to send lease agreements to the Office of Attorney General for approval as to the form of the documents. On the final page of the lease extension, there is a conspicuously blank line for approval by a representative of the Office of Attorney General. The blank line on the lease extension indicates that those involved in executing the extension considered -- and then decided against -- sending the document to our office.

The Guard's position all along has been that an extension of the Air Force lease was necessary to satisfy the Air Force policy requiring that there be at least 25 years remaining on a lease for the Air Force to release funds for capital improvements to the base. While the Guard has presented this as an unqualified requirement, and has stated that the new wastewater treatment plant could not be built unless the lease were extended, the 25-year requirement is in fact simply a policy, codified in internal military regulations, that the Air Force has authority to waive. As late as the spring of 1994, Guard officials were apparently telling DCPO that the extension was needed in order to build a new wastewater treatment plant. In fact, the Guard had already obtained a waiver of the 25-year policy for the treatment plant. As the June 8, 1998 cover letter from DCPO to our office reveals, DCPO apparently continues to believe to this day that the extension had to be obtained to build the treatment plant.

Acting Governor Cellucci has not directly responded to our requests for information, but DCPO and the Adjutant General's office have responded. DCPO's main response consisted of a legal opinion stating that the Governor had legal authority to grant the extension. While this conclusion is straightforward in light of the statute at issue, G.L. c. 33, § 114, it does not answer the questions we asked. Col. Norman A. Welch, Jr., Assistant Adjutant General, responded with his office's account of how and why the lease extension was granted. He states that the



extension was necessary to satisfy the 25-year policy so that federal funds could be released for the medical training and combat communications facilities. It may well be true that the extension was linked to these two projects, although it is not clear whether DCPO was aware of them, or whether Guard officials told the Governor's office specifically about these two projects or about the waivability of the 25-year policy. The documents the Guard provided us reveal only that the Guard told the Governor's office that the extension issue was "affecting a number of other important issues." It is thus also not clear what justification the Governor accepted for the extension, and on what basis he decided to sign it.

Without answers from the Governor's office, or an explanation of what the Commonwealth was getting in exchange for the lease extension or why the extension was necessary and desirable, we cannot determine on exactly what basis the Governor decided to grant the extension. It is nonetheless clear that in giving away the extension to the Air Force without even bargaining for environmental or economic *quid pro quos*, state officials missed a significant opportunity to assert the interests of the Commonwealth.

In the end, it was fundamentally unfair to extend the Air Force lease without giving notice to the public. Even to the extent the 25-year policy was behind the Guard's and the Air Force's efforts to obtain the extension, this policy provides no justification for keeping the extension out of the public view. The unfairness of withholding information about the extensions from the public is particularly serious given the grounds for EOEA's decision to deny the fail-safe request -- the request was denied only because the Guard had withdrawn its extension request. By later quietly extending the lease, the Guard's and the Governor's actions ensured that the citizens' fail-safe request would never be heard on the merits.

IV. THE VALIDITY OF THE LEASE EXTENSION

The question of whether the problems with the extension process render the extension legally invalid is, however, a separate issue. Citizens have asked specifically whether the absence of a signature from our office affects the validity of the lease extension. Since there is no legal requirement that the Attorney General's office be consulted before entering a lease or approve its form, the decision by the Guard and/or the Governor's office not to obtain a signature -- while it may have been ill-advised -- does not invalidate the lease.



Citizens have also asked whether the citizens' MEPA "fail-safe request" provides grounds for invalidating the lease. As discussed above, a group of citizens filed a "fail-safe request" for environmental review of the lease extension in 1992. While the fail-safe request makes the failure to provide public notice of the extension even more objectionable, we have concluded that the fact that no environmental impact report was performed for the extension does not render the extension invalid. The regulations governing MEPA review require EOEA to respond to fail-safe requests, but they do not explicitly require a proponent of an action or project to provide public notice if the action or project does not fall into a category automatically requiring MEPA review. The fact that members of the public later learn of an action and believe MEPA review should have occurred does not necessarily invalidate the action.

Here, however, there is evidence to suggest that the Air Force and the Guard acted deliberately to avoid the possibility of environmental review. They first shortened their extension request to avoid having to file an ENF. They withdrew their lease extension request in 1992, causing the citizens' fail-safe request to be denied as moot. Then, knowing that citizens expected to be able to file another fail-safe request if the extension request were renewed, but without providing any public notice, military officials reinitiated the extension request less than 18 months later. In these circumstances, the Secretary of EOEA may have authority to consider an after-the-fact fail-safe request, should citizens wish to pursue it. The Supreme Judicial Court has stated that a project proponent may be required to comply with MEPA retroactively, at least if the proponent knew MEPA review was required and deliberately avoided it. The Villages Development Co., Inc. v. Secretary of the Executive Office of Environmental Affairs, 410 Mass. 100, 116 (1991). See also Ogunquit Village Corp. v. Davis, 553 F.2d 243, 246 (1st Cir. 1977) (retroactive relief may be available if there is "conscious design to circumvent the requirements of NEPA as would amount to bad faith"). Of course, the Secretary would have discretion to decide whether to exercise her fail-safe authority in this situation.

Acting on a fail-safe request now might have little practical impact, however, particularly because the lease extension involves a contract between the Commonwealth and the United States. The United States would probably argue that this contract would not become automatically void even if the Secretary of EOEA required environmental review and raised significant environmental issues relating to the extension. Disagreement on this point might lead to lengthy and costly litigation, with uncertain results. In addition, most land-use discussion has so



far focused on changing the use of Camp Edwards, which is subject to the Army lease, not on significantly altering the use of the land subject to the quietly extended Air Force lease. Accordingly, we believe that at this point, the best course for our office is to move forward with planning for the future of the base and, to the extent that it conflicts with desired future uses, to press for partial or total termination of federal leases through the procedures that will be discussed in Phase II of our "Report on Legal Control Over Land Use at the MMR."



## CONCLUSION

Evidence we have collected in the course of our investigation of the lease extension suggests that state military officials in the Adjutant General's office and the Massachusetts National Guard, including Adjutant General Vezina himself, played a central role in seeking and obtaining the extension of the Air Force lease. The evidence also suggests that these officials acted deliberately to avoid the possibility of environmental review. Most significantly, the evidence suggests that they knew the public and our office would want to know of the renewed extension request, and that citizens expected to have an opportunity to file a new fail-safe request for MEPA review, but that these officials nonetheless did not make the request public. Making such a decision directly affecting Cape Cod citizens without giving them notice was fundamentally unfair. As the public reaction to the extension confirms, lease and license decisions cannot continue to be made behind closed doors, without public input.

The process within the state government appears to have been inadequate as well. There is evidence to suggest that the Guard did not fully inform DCPO about the reasons the extension was needed. Indeed, DCPO continued to believe the extension was needed to allow construction of the new wastewater treatment plant to proceed, when in fact the Air Force had already granted a waiver allowing the treatment plant to be built without the extension. It is not clear what explanation the Adjutant General and the Guard gave to the Governor for the extension, or on what basis the Governor decided to sign it. What is clear is that by failing to bargain for concessions from the Air Force in exchange for the extension, the Administration lost a significant opportunity to assert the interests of the Commonwealth.

While state officials cannot now regain that lost opportunity, they can move forward and push for the implementation of land use plans that are being developed for the future of the base, through the procedures we will lay out in Phase II of our "Report on Legal Control Over Land Use at the MMR." To the extent that any of the federal leases -- including the leases to the Army, Air Force, and Coast Guard -- conflict with planned uses of the MMR, the first step will be for the Governor to request the federal government to terminate the leases, in whole or in part, and return the land to state control.



APPENDIX: SELECTED DOCUMENTS

<u>Document</u>	<u>Date</u>	<u>Description</u>
1	10/24/91	Letter: Army Corps (Klote) to Office of the Attorney General (Zars)
2	12/24/91	Memo: Adjutant General Wagner to National Guard Bureau
3	2/28/92	Memo: Air Force (Killey -- Director of Air National Guard) to Adjutant General Wagner
4	6/16/92	Memo: Office of Attorney General (Abromowitz) to Massachusetts Air National Guard (Murray)
5	undated	Talking points in favor of lease extension
6	7/28/92	Waiver of 25-year funding requirement for wastewater treatment plant granted by Deputy Asst. Secretary of the Air Force
7	8/5/92	Memo: Air Force (Bullman) to Army Corps of Engineers (Nuremberg)
8	8/20/92	Denial of fail-safe request: EOEA (McCabe) to citizen (Hugus) and Military Division (Keating)
9	11/24/93	Memo: National Guard Bureau (Simmons) to Adjutant General Vezina
10	12/13/93	Adjutant General Vezina to DCPO (Civilinski)
11	12/22/93	Memo: Internal DCPO (Brewer to Keith)
12	6/7/94	Memo: Military Division (Keating) to Air National Guard Readiness Center (Lundgren)
13	9/27/94	Memo: Internal Military Division (Keating to Vezina)
14	1/13/95	Letter: Military Division (Keating) to Governor's office (Aims)
15	4/11/95	Executed Lease Extension
16	6/3/98	Response of Adjutant General's office to inquiry by Office of Attorney General
17	6/3/98	Response of DCPO to inquiry by Office of Attorney General
18	6/8/98	Cover letter from DCPO to Office of Attorney General







24 OCT 1991

Real Estate Division  
Acquisition Branch

Reed Zars, Esq.  
Environmental Protection Division  
Department of the Attorney General  
Commonwealth of Massachusetts  
John W. McCormack State Office Building  
One Ashburton Place  
Boston, Massachusetts 02108-1698

Dear Mr. Zars:

This is a follow up to your recent telephone conversations with Mr. Stanley Nuremburg of my staff concerning the proposed Supplemental Agreement No. 4 to Lease No. DACA51-5-75-293 covering the use of Otis Air National Guard Base (formerly Otis Air Force Base) by the Government. The Agreement was forwarded to the Commonwealth by the Corps of Engineers' New England Division on May 1, 1990. It provides for a 25 year lease extension to 2041, with an option by the Government to extend the lease to 2066. I understand that it was reviewed by your immediate predecessor, Ms. Judith Saltzman, and that you are now completing her review.

The Agreement will allow the Air Force to commence a fifty five million (\$55,000,000) dollar multi-project program to upgrade the facilities of the Massachusetts Air National Guard at Otis ANG Base over the next three Fiscal Years and beyond. We believe this upgrade program represents a substantial benefit to the Commonwealth. The Air Force is precluded by law and regulation from building projects on non-Government land unless the Government has a firm term interest for at least the projects' useful life, in this case 25 to 50 years. These projects are designed in accordance with State and Federal environmental laws and regulations, whichever is more stringent.

We are concerned, however, because we have received nothing from the Commonwealth in response to our submission of the Agreement. If the Agreement is not consummated by November 15, 1991, the first of these projects, a fifteen million (\$15,000,000) dollar "Alter Waste Water Treatment Plant" project (which has already received all relevant environmental certifications and clearances) will be cancelled. Future projects will be similarly affected in the absence of the lease extension.

As you discussed with Mr. Nuremburg, we would be glad to respond to any written or oral comments or concerns you or your office may have concerning the Agreement. Should you need



additional information, please contact either Mr. Huremburg or myself at the above address or telephone (212) 264-8142.

In view of the circumstances, I would appreciate it if you would use your good offices to expedite the Commonwealth's review of the lease so that the Agreement can be completed by November 1961.

Sincerely,

Paul J. Riote  
Acting Chief, Real Estate Division



CF:

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# THE COMMONWEALTH OF MASSACHUSETTS

MILITARY DIVISION

## THE ADJUTANT GENERAL'S OFFICE

CAMP CURTIS GUILD

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In reply refer to

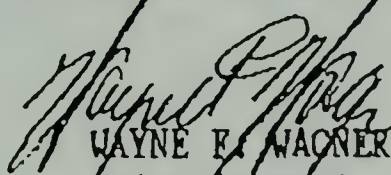
MAAR-AG

24 December 1991

MEMORANDUM FOR Major General Phillip G. Killey, Director, Air National Guard, NGB/CF, Pentagon, Washington, DC 20310-2500

SUBJECT: Extension of Lease, Otis ANG Base, MA

1. For the past two (2) years the Massachusetts National Guard has been involved with the processing of the next twenty-five (25) year lease for Air National Guard at Otis Air National Guard Base on Cape Cod. This land encompasses 2200 acres and is owned by the Commonwealth of Massachusetts. Negotiations with the National Guard Bureau, Headquarters United States Air Force and the Corps of Engineers have been completed in a very satisfactory manner. During the last year we have been attempting to complete this task by securing the approval of the Commonwealth of Massachusetts through the Attorney General's Office. After many discussions, the State rendered its decision indicating that the current lease could not be extended for 25 years (with an option for an additional 25 years) because this action, in its opinion, would require the prior completion of an environmental notification form (ENF). This was due to the fact that current environmental laws require this filing and written approval for any parcel of land greater than 25 acres in size and for a period of more than 10 years.
2. Current Air Force and Air National Guard policy requires leases for 25 year periods with an option for an additional 25 year period. This policy allows for long-term amortization of federal dollars for new construction projects. Our current lease expires on 30 September 2016. We presently have a major FY 93 MILCON project under design to upgrade our waste water treatment plant on Base. As of this date, we do not have a minimum of 25 years remaining on our lease.
3. I feel that our best course of action would be to secure a lease of less than 10 years. This action would not require any environmental filings and provide for a prompt decision by the Commonwealth of Massachusetts.
4. I am aware that the shorter 10 year lease is not the customary term of acquiring a lease. However, I am confident at this time the shorter lease will provide all of us with sufficient time to conduct our business and put the Air Force lease in line with the Army and the Coast Guard leases which expire in 2026.
5. Request National Guard Bureau initiate action with the Corps of Engineers to extend the current lease by a 10 year period.

  
WAYNE E. WAGNER  
Major General

The Adjutant General





DEPARTMENTS OF THE ARMY AND THE AIR FORCE

NATIONAL GUARD BUREAU  
WASHINGTON, D.C. 20310-2500



28 FEB 1992

NGB/CF

Extension of Lease, Otis ANG Base, MA (Your Memo, 24 Dec 91)

Major General Wayne F. Wagner  
The Adjutant General, Massachusetts

1. We concur that a lease extension of ten years be sought and have requested the Corps of Engineers to proceed accordingly.
2. We realize that construction on projects cannot be started until the subject extension has been executed; therefore, this will be a priority item until the action has been consummated.

FOR THE CHIEF, NATIONAL GUARD BUREAU

*Philip G. Killey*  
PHILIP G. KILLEY  
Major General, USAF  
Director, Air National Guard



GOULSTON & STORRS

A PROFESSIONAL CORPORATION

MEMORANDUM

Proposed Amendment to Lease  
from  
The Commonwealth of Massachusetts  
to  
The United States of America  
of The Massachusetts Military Reservation ("MMR")

TO: Mark Murray, Esq.

FROM: David Abromowitz, Esq.  
Steven Schwartz, Esq.

DATE: June 16, 1992

---

What follows is a list of points to be incorporated into an amendment of the existing leases covering the areas shown on the plan attached hereto as Exhibit A (collectively, the "MMR Leases"). The purpose of this Memorandum is to set out those matters which need to be included in such an amendment. When the specific details of each of these points are worked out, they will be incorporated into an amendment. Such amendment shall be subject to the review processes applicable to the Commonwealth prior to entering into an agreement of like kind.

1. Term: The term of the lease for Otis Air Force Base shall be extended from a final date of September 30, 2016 for an additional ten (10) years to September 30, 2026. The Otis Air Force Base lease and the other MMR Leases shall be amended to include the terms set forth below.
2. Premises: The premises of the MMR Leases shall be reduced by excluding therefrom the following: TO BE DISCUSSED.
3. Parties: The Commonwealth of Massachusetts is the lessor. The lessee under the MMR Leases shall be the United States of America, as represented by a single service or agency.
4. Rent: The current rent arrangement is not adequate. The Commonwealth proposes that a fair rent be paid, on an annual basis, commencing with the execution of the amendment. The rent should be calculated based upon an amount equal to the sum of the following:



(a) The aggregate amount of payments in lieu of taxes that would otherwise be paid to the various municipalities in which the MMR premises lie, which amount shall be revised from time to time as changes in local tax rates and assessments are otherwise revised;

(b) An amount equal to seventy five percent (75%) of the otherwise fair market value of the premises for non-military use, which amount shall be amortized over the term of the MMR Leases as if all extensions and renewals thereof had been exercised by the United States (i.e., amortized over a period of \_\_\_\_\_ (\_\_\_\_) years), with such fair market value to be determined through an appraisal process to be determined by the parties. Amounts expended by the United State in remediation of the Contamination as outlined below shall not be applied against or otherwise offset against such rent. However, Remaining Useful Improvements (defined below) shall be offset against such rent in an amount equal to the fair market value of such Remaining Useful Improvements amortized over the life thereof during the remaining term of the MMR Leases.

5. Current and Future Assessment and Remediation: The MMR Leases shall include substantive standards, consistent with the State law, for the assessment and remediation of the environmental contamination of the MMR and all places where contamination from the MMR has come to be located. Without limitation, the extent of contamination of ground and surface waters shall be expeditiously assessed, and such contamination shall be remediated pursuant to a processes and standards applicable in the Commonwealth. In order to prevent ongoing contamination of ground and surface waters, control measures for the sources of this contamination shall be given priority and promptly implemented. Principles applicable to the remediation shall include, at a minimum, the following:

(a) All response actions performed at the MMR or any place at which contamination from the MMR has come to be located, shall attain all legally applicable or relevant and appropriate Federal and State environmental standards, requirements, criteria and limitations. All State environmental laws and regulations shall be followed in the conduct of the remediation;

(b) The Commonwealth's Department of Environmental Protection (DEP) shall be the Department of the Commonwealth charged with the oversight of the MMR Leases provisions applicable to remediation, with the Department of the Attorney General (AG) acting as the applicable enforcement agency for the Commonwealth; and



(c) The United States shall be responsible for the remediation of all off-base sites which have become contaminated by reason of activities conducted on the MMR.

7. Past Response Costs: The Commonwealth shall receive reimbursement from the United States for all of the Commonwealth's past "responses" as that term is defined in 42 USC 9601(25) and M.G.L. c. 21E, §2, incurred through the date of execution of the amendment, including, but not limited to, the cost of all off-base response actions performed by the Commonwealth.

*There is no #1*

8. Future Operation and Maintenance Costs: All future operation and maintenance of response actions shall be provided and paid for by the United States. In order to ensure that there are effective programs of maintenance of remedial actions and activities required to maintain the effectiveness of such measures, the construction and installation of certain capital facilities will be necessary. The United States will be responsible for all costs associated with such construction and installation and for the operation and maintenance of such facilities for the expected life of all remedial actions. In the event that the MMR Leases shall terminate prior to the end of the remaining useful life of such capital equipment, the United States agrees to fund a "sinking fund" adequate to provide the then reasonably estimated maintenance and operating costs for the expected life of such actions.

9. Natural Resource Damage Assessment Cost: The United States shall reimburse the Commonwealth for all costs incurred by the Commonwealth in conducting any and all natural resource damage assessments in connection with the environmental contamination of the MMR and surrounding areas.

10. Ongoing Prevention and Maintenance: Recognizing the extensive nature of the Contamination, the MMR Leases shall address in addition to remediation efforts a permanent program of prevention of future environmental contamination and will contain, without limitation, provisions requiring the United States to adopt an affirmative program to prevent the degradation of air, soils and ground and surface waters in the vicinity of the MMR and their maintenance in an uncontaminated state. The ongoing operations of the United States in the MMR shall comply with all Federal and State environmental laws and regulations.

11. Environmental Audits: The United States shall conduct an annual environmental audit of the MMR to ensure compliance with all state and federal environmental statutes and regulations (in addition to more frequent testing, inspections and reporting that may be required or appropriate under specific circumstances). Such audits shall include, without limitation, an inventory of all above ground and underground storage tanks



and each tank's status, including its location, contents, date of most recent testing and the results of such testing. All environmental audits shall be made available to the public promptly upon completion.

*on going operations also*

12. Contracting Policies: In recognition of the substantial economic detriment caused by the Contamination, it is appropriate that a portion of the Remediation Work to be performed be contracted with Massachusetts companies and with the employment of Massachusetts workers. To that end, the MMR Leases shall contain an agreement to use not less than a certain percentage of such contractors and workers as well as a process for solicitation of bids that increases the likelihood of reaching such goals. The Commonwealth recognizes that such agreements must take into account certain legal obligations of the United States in contracting for such work, in the event that waivers thereof are not legally available.

13. Improvements: The United States will agree to make improvements to the MMR premises for the following purposes in the following location: TO BE DISCUSSED. Subject to appropriate access rules and regulations, the United States agrees to make available such improvements pursuant to a program of access to be agreed upon in the amendment. Such improvements are intended to be constructed so that they shall be in good condition at the end of the term of the MMR Leases. Such improvements shall be considered Remaining Useful Improvements.

14. Termination: The current MMR Leases are grossly inadequate in permitting a termination by the United States upon thirty (30) days' notice and without clear standards for the United States' post-termination obligations. Termination of any of the MMR Leases shall require not less than eighteen (18) months' prior notice, during which time all lease obligations shall remain in full force and effect. Upon the effective date of a lease termination, the United States shall be obligated to (a) complete all Remediation, (b) complete and maintain all requirements for the ongoing prevention of Contamination, (c) maintain and turn over in good condition all Remaining Useful Improvements and (d) otherwise restore the MMR to a good and useful condition for non-military purposes. To the extent there is any environmental contamination of the MMR or surrounding areas which under applicable law are hazardous substances, hazardous materials, pollutants, contaminants or oil, as those terms are defined in CERCLA Section 101(14) and (33) and M.G.L. c. 21E, §2, the United States shall remain fully liable for the remediation thereof and all damage caused thereby to any party.

13. Commonwealth Access: The Commonwealth shall have the right, upon reasonable notice to the United States (except in the case of emergency, when no such notice shall be required) to enter upon the leased premises for inspection of the leased



premises, for performance of response actions and for ensuring compliance with the terms of the MMR Leases as amended.

14. Removal of Underground Tanks: The United States shall provide the Commonwealth with a complete observation record and documentation of all removals of underground storage tanks and feed lines/pipes at the MMR, including, but not limited to, clean-up action levels and procedures to be followed if contamination is found or suspected to be present. The United States shall report all releases from underground storage tanks and/or pipes forthwith upon discovery to the Commonwealth.

15. Notice of Environmental Activities and Contracts: The United States shall supply DEP with timely notice of (i) all material environmental activities scheduled to take place at the leased premises; and (ii) all material upcoming environmental contracts to be signed by the United States involving the leased premises. The Commonwealth shall have an opportunity to review and comment on all upcoming environmental activities and contracts.

16. Formulation of Ordnance Detection and Remediation Plan: To Be Discussed.

/3826



Otis ANGB comprises approximately 3530 acres of the 20,383<sup>\*</sup> acre Massachusetts Military Reservation: \* includes VA Cemetery of approximately 740 acres

1313 - acres of Otis ANGB are owned in fee by the Air Force  
2217 - acres of Otis ANGB are leased by the Air Force from the Commonwealth of Massachusetts.

- The lease of the 2217 acres expires on 30 September 2016.
- The lease on the 14,706 acres which is Camp Edwards expires on 30 September 2026.
- The lease on the 1407 acres which is the Coast Guard Air Station Cape Cod (which includes the base housing area) expires on 30 September 2036.
- The Wastewater Treatment Plant for the entire Massachusetts Military Reservation is located on Otis ANGB and on that portion of the land which is leased from the Commonwealth of Massachusetts.
- The wastewater treatment plant at Otis is operated by the Massachusetts Air National Guard utilizing 100 % federal funding.
- The wastewater treatment plant must be upgraded to meet all state and federal regulatory requirements.
- There is an Administrative Order issued by the Commonwealth of Massachusetts which requires the wastewater treatment plant to be upgraded.
- The National Guard Bureau has completed a federal Environmental Impact Statement and state Environmental Impact Report on the plans for upgrade. Public Meetings were held and a decision made to upgrade to tertiary treatment and to move the discharge point (sand filter beds) up near the Cape Cod Canal so that the Cape's groundwater supply is not affected and the Ashumet Valley plume of contamination from the plant finally ended.
- Congress has appropriated federal funds for the construction of the new plant
- The Boston-based firm of Camp, Dresser & McKee has been hired to perform the design work for the new plant.
- Design completion is expected in December 1992.
- It is hoped to put the construction out to bid in early 1993 with completion of construction in 1994.
- It is DOD policy (Congressionally driven ?) that in order to expend funds for major construction projects that the government have at least 25 years of lease on the land remaining.
- At present, there is only about 24 years and 6 months remaining on the lease.
- The National Guard Bureau originally initiated action to extend the lease for an additional 25 years. Twenty-five years were chosen because that is the typical timeframe for all lease transactions which the National Guard gets involved in.



- There is a requirement in the Massachusetts Environmental Policy Act (MEPA) (copy attached) that all leases of state land of 25 acres or more for more than 10 years requires the filing of an Environmental Notification Form (ENF) to the Executive Office of Environmental Affairs.
- The filing of an ENF could result in a decision by MEPA that an Environmental Impact Report be conducted.
- There is also a provision in MEPA called "fail safe" in which the Secretary of Environmental Affairs can require an ENF even if the mandatory provisions of the MEPA don't require it.
- The National Guard Bureau is in the process of changing the lease extension request so that the lease will carry to 30 September 2026.
- This extension is for only ten years and will not require the filing of an ENF.
- This extension will also bring the lease of the 22/7 acre parcel of Otis ANGB up to the same expiration date as the remaining 6, 113 acres on the leases for the Army Guard at Camp Edwards and the Coast Guard at Air Station Cape Cod.
- There is concern that activists opposed to the National Guard's presence at the Massachusetts Military Reservation will attempt to force an unneeded ENF/EIR which will cause the delay in the upgrade to the wastewater treatment plant. It is felt that they will ask for a complete Environmental Impact Statement on the entire reservation's existence.
- There is no need for further environmental reviews as:
  - The consent decree entered into by the National Guard and the Conservation Law Foundation mandates that the Army National Guard conduct a complete Environmental Impact Statement as part of its Camp Edwards Master Plan upgrade project.
  - The Towns of Mashpee and Sandwich are under state order to close down their septic lagoons and develop their own wastewater treatment facilities.
  - The Towns of Mashpee and Sandwich are interested in tying into Otis's wastewater treatment plant after it is upgraded for the base, and after they conduct additional environmental studies and further upgrade/expand the base's plant to meet the extra capacity.
  - Part of the land leased by the Air Force from Massachusetts has been further leased to the Town of Falmouth. Constructed on it is a Regional Solid Waste Transfer facility servicing the Towns of Falmouth, Mashpee and Sandwich as well as the military base. Garbage from the towns is brought onto the base and shipped by rail to the SEMASS facility in Rochester.
  - There is an interest in building a regional recycling center adjacent to the Regional Transfer Station to serve the Upper Cape Towns and the base; and possibly the entire Cape.
  - No action on this concept can proceed without the initial Air Force lease with Massachusetts extended.
  - The sole purpose of the lease extension is to meet the federally imposed requirements to have at least a 25 lease remaining on the land so that the wastewater treatment plant can be upgraded. This project has already undergone a complete state and federal environmental review.



- Any other projects contemplated on the land for which the lease extension is being requested will have to go through individual state and/or federal environmental review. For example, the project to replace the underground fuel storage and distribution system with a modern, state of the art system to prevent future environmental problems, the project to replace the existing coal/gas burning heating plant, airfield safety lighting improvements, etc.

We've been informed by the Massachusetts Attorney's Office that they are interested in resolving the lease issue so that the wastewater treatment plant project can proceed.

What we'd like you and other members of the Cape Cod delegation to do is to approach Secretary Tierney on this issue and to bring the facts/concerns to her attention so that a decision is made not to require an ENF filing.

An ENF filing can cause real serious problems if it forces the wastewater treatment plant project to be delayed: The sewage plant serves primarily the Coast Guard Family Housing Area as well as the Bourne schools on base. If we can't upgrade the plant, we can't continue our Air National Guard operations at Otis. This, in turn, could lead to a decision by the Pentagon to close Otis. Some 600 plus full-time employees (all federally paid) would lose their jobs, some 1,200 part-time Air National Guard jobs would also be abolished. The Coast Guard would probably have to leave Cape Cod as they don't have the funding to operate the base. In addition to the sewage system, the Air Guard operates the base's water system, operates the airfield system, base police department, fire department, etc. These services are also provided to the Bourne school system.

The lease issue is the most serious matter we face as it impacts all other activities which the Air Guard and every other entity on the base is involved with. It also involves the Installation Restoration Program. Since the Air Guard is the major tenant on the Massachusetts Military Reservation, it is the lead agency in the environmental cleanup. If the Air Guard wasn't here, the responsibility for the IRP would probably fall back to the Air Force. While we're sure they would step in and do what's required, there wouldn't be the active interest and involvement of the permanent Air National Guard personnel on the base in the process and effective communications between the local towns and populace and the personnel in charge of the cleanup would be impacted.





## DEPARTMENT OF THE AIR FORCE

WASHINGTON DC 20330-1000

OFFICE OF THE ASSISTANT SECRETARY

28 JUL 1992

MEMORANDUM FOR DIRECTOR, AIR NATIONAL GUARD (MGEN KILLEY)

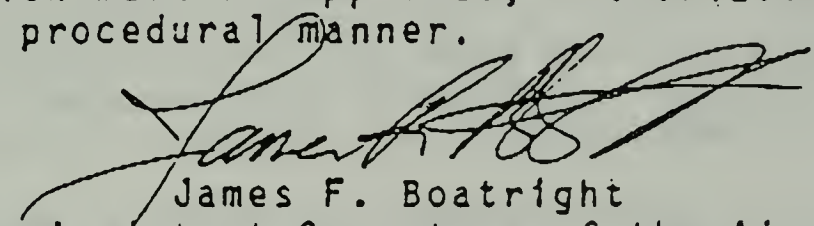
SUBJECT: FY 92 Military Construction Project (MCP) on  
Leased Land - ACTION MEMORANDUM

Title 10 U.S.C. paragraph 2239(b) (Reserve Forces) allows construction on other than fee-owned land if the Secretary of a Military Department determines the land interest to be sufficient for the purpose of the project. The authority to make this determination was delegated to this office by Secretary of Air Force Order (SAFO) 700.10.

I have determined, in accordance with the provisions of SAFO 700.10, that there is sufficient federal real property interest to allow construction and approve a waiver for the project described below.

<u>State/Base</u>	<u>Project</u>	<u>Approved Funding Cost</u>
Massachusetts/Otis	Alter Waste Water Treatment Plant	\$15,000,000

These determinations do not specifically authorize construction projects, which must be approved, authorized and appropriated in the usual procedural manner.

  
James F. Boatright  
Deputy Assistant Secretary of the Air Force  
(Installations)



## STAFF SUMMARY SHEET

TO	ACTION	SIGNATURE (Surname), GRADE AND DATE	TO	ACTION	SIGNATURE (Surname), GRADE AND DATE
NGB/FM	Coord	<i>Shelton, Lt Col</i> 7/22/92			
NGB/CF	Appr	<i>Kelly M. King</i> 25 Jul 92			
SAF/MIQ	Coord	<i>King, M. King</i> 25 Jul 92			
SAF/MII	Sig	<i>King, M. King</i> 7/28/92			

NAME OF ACTION OFFICER AND GRADE	SYMBOL	PHONE	TYPIST'S INITIALS	SUSPENSE DATE
King, GS-12	NGB/CE	981-8117	mtk	

SUBJECT	DATE
FY 93 Military Construction Project on Leased Land	21 JUL 1992

**SUMMARY**

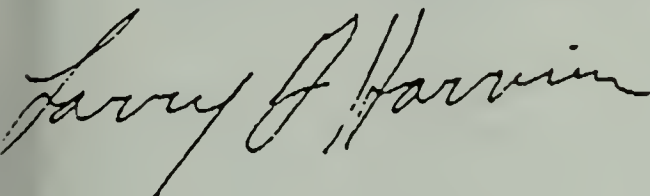
- SAF/MII requires that MILCON projects, to be constructed on leased land, have at least 25 years remaining on their lease.
- The ANG FY 93 MILCON budget includes a \$15.0 million project to Upgrade the Waste Water Treatment Plant at Otis, Massachusetts. The project is scheduled to be designed complete soon and be ready for procurement action shortly after.
- The project proposes the replacement of antiquated waste water treatment plant that fails to meet current Federal/State EPA requirements. This is a category one environmental compliance project.
- The project supports not only ANG occupied facilities, but also U.S. Army National Guard and U.S. Coast Guard facilities. Only a portion of the \$15.0 million project is on leased land with just over 24 years remaining.
- Even though we do not have the 25 years, we feel we should proceed with the MILCON for the following reasons:
  - Reference SAF Memorandum to the Director, ANG, 2 Dec 91, (Tab 2): SAF approved the project with the provision that construction will not begin until the minimum leasehold interest specified for the project was formally acquired. Negotiations are still continuing with the Commonwealth of Massachusetts for a lease extension.
  - Otis is a former AF base with one of the oldest treatment plants in the DOD inventory. New requirements of the Clean Water Act have made our plant out of compliance for nitrogen. The State has issued an administrative order that no additional facilities can be constructed until the plant is in compliance.
  - Otis is on the NPL and any additional contamination may add to the clean up cost and result in adverse publicity.
  - Shut down of the plant would impact not only ANG, but also ARNG and the U.S. Coast Guard.
  - There is a perception within the State that the Federal Government will attempt to tie the lease extension to the construction of the MILCON project. This is not the case.



## RECOMMENDATION:

a. NGB/CF approval to process the request to SAF/MII to obtain a waiver to the 25 year lease.

b. SAF/MII approval and signature of memorandum to NGB/CF (Tab 1).



2 Tabs

1. Memorandum to NGB/CF for  
SAF/MII Signature

2. SAF Memo, 2 Dec 91





DEPARTMENT OF THE AIR FORCE

AIR NATIONAL GUARD READINESS CENTER  
ANDREWS AIR FORCE BASE, DC 20331-5001

ANGRC/CE

05 AUG 1992

Renewal of Lease DACA 51-5-75-293 and License DACA 51-3-84-50,  
Otis ANG Base, MA

U.S. Army Engr Dist, CENAN-RE-A  
Attn: Mr. Stanley Nuremburg  
Jacob K. Javits Federal Building  
New York, NY 10278-0090

1. Reference is made to your letter of 14 Apr 92 to the Adjutant General, Commonwealth of Massachusetts, transmitting the proposed supplemental agreement to subject lease to effect a ten year extension to 30 Sep 2026.

2. It is requested that all actions, to bring about this lease extension, be held in abeyance until further notification by this office to allow sufficient time to resolve other issues affecting the outcome of this lease extension.

3. We appreciate your efforts in this endeavor and will keep you advised as to when the lease extension action is to be resumed.

FOR THE CHIEF, NATIONAL GUARD BUREAU

  
GEORGE T. BUKMAN, Colonel, USAF  
Director of Engineering and Services

cc: TAG MA  
102 FH/CC/DE





*The Commonwealth of Massachusetts*  
*Executive Office of Environmental Affairs*  
*100 Cambridge Street, Boston, 02202*

WILLIAM F. WELD  
GOVERNOR

August 20, 1992

(617) 727-9800

ARGEO PAUL CELLUCCI  
LIEUTENANT GOVERNOR

SUSAN F. TIERNEY  
SECRETARY

Col. Ernest R. Keating  
Base Commander  
Massachusetts Air National Guard  
Building 158  
Otis Air National Guard Base, MA 02542-5001

Richard Hugus  
Alliance for Base Cleanup  
5 Amvets Avenue  
Falmouth, MA 02540

Re: Fail-safe request; Main Base Area, Otis Air National Guard  
Base

Dear Col. Keating and Mr. Hugus:

As you know, Secretary Tierney currently has before her the request by the Alliance for Base Cleanup that she require the filing of an Environmental Notification Form for the Main Base Area at the Otis Air National Guard Base. The request was prompted by the fact that the Air National Guard (ANG) was seeking an extension to its lease with the Commonwealth for the Base property.

In recent weeks, we have learned that the ANG is not in fact seeking such a lease extension. Without the extension, the Secretary has no legal authority to require compliance with the Massachusetts Environmental Policy Act (MEPA) and therefore has no basis to require environmental impact review. A letter of August 8, 1992, between Colonel George Bullman and Stanley Nuremburg has confirmed that the lease extension is no longer being sought. For this reason, therefore, the fail-safe request is denied.

If the ANG should resume negotiations with the Commonwealth for the lease extension in the future, the petitioners are free



to refile their fail-safe request. This letter should not be taken as a judgment on the merits of the present request or any future request that might be filed.

Sincerely,

Janet G. McCabe

Janet G. McCabe  
Assistant Secretary  
MEPA Unit

cc: ~~Mr. Van Dusen, AG's Office~~

Sen. Rauschenbach  
Rep. Cahir





DEPARTMENT OF THE ARMY AND THE AIR FORCE

NATIONAL GUARD BUREAU  
OFFICE OF THE U.S. PROPERTY AND FISCAL OFFICER, MASSACHUSETTS  
143 SPEEN STREET, NATICK, MASSACHUSETTS 01780-2599

REPLY TO  
ATTENTION OF:

24 November 1993

MAAR-DFE


MEMORANDUM FOR: MG Raymond A. Vezina, The Adjutant General,  
Camp Curtis Guild, Haverhill Street,  
Reading, MA 01867-1999

SUBJECT: Request for Lease Extension for Lease DACA 51-5-75-293, Otis  
ANGB, MA.

1. Please find attached a copy of the Air National Guard's Lease Extension Request and other supporting documentation.
2. The lease extension requires review by the Attorney General's Office and the Governor's approval.
3. I have confirmed with LTC Murray that COL Costello's authority as an Assistant Attorney General is limited to the approval of Certificates of Title only. As such he may not approve this lease extension as to form. He is available to clarify this issue should you so desire.
4. Prior to forwarding this document to the Governor's office I would suggest that you discuss it with both LTC Murray and COL Keating. They can provide background information on the previous attempt to extend this lease as well as discuss strategy on how to secure the approval of this request.
5. Please contact me if you have any questions.

FOR THE USPFO:

Encl

  
K. ROGERS SIMMONS JR.  
Major, EN  
Facilities Management Officer

cf:  
MAAR-PFO w/o Encl  
MAAR-JAG w/o Encl  
COL Keating w/o Encl





THE COMMONWEALTH OF MASSACHUSETTS

MILITARY DIVISION

THE ADJUTANT GENERAL'S OFFICE

CAMP CURTIS GUILD

HAVERHILL STREET, READING, MA 01867-1999

*Tom Powers*  
*Paul Brogan*  
*W. Engelen*

In reply refer to

MAAR-JA

December 13, 1993

John C. Civilinski  
Director  
Division of Capital Planning & Operations  
100 Cambridge Street  
Boston, MA 02202

RE: Lease Extension for Otis Air National Guard Base

Dear Mr. Civilinski:

In 1976, the Commonwealth of Massachusetts entered into three lease agreements with the United States of America for land at the Massachusetts Military Reservation on Cape Cod. The United States subsequently licensed two of the parcels of leased land back to the Massachusetts National Guard to operate for National Guard purposes. The United States Coast Guard occupies the third parcel of leased land.

The lease pertaining to the parcel known as Otis Air National Guard Base expires September 30, 2016. The two remaining leases expire September 30, 2026.

The United States Air Force, which provides 100% funding for most of the capital improvements at Otis ANGB, requires that the federal government maintain a minimum 25 year interest in real estate prior the expenditure of these funds. Therefore, I request your office grant an extension until September 30, 2026 of the Otis Air National Guard Base lease to the United States of America.

This extension will cause all three leases to terminate on the same date and will allow the federal government to continue to support the capital improvements at Otis ANGB.

To assist you, enclosed please find a copy of Chapter 33 sec. 114 of the Massachusetts General Laws which gave the authority to the governor to enter into these leases, further background on this issue and copies of all three leases.

Your assistance in this regard is greatly appreciated.

*Raymond A. Vezina*  
RAYMOND A. VEZINA  
MAJOR GENERAL (MA)  
THE ADJUTANT GENERAL



# OFFICE OF REAL ESTATE MANAGEMENT

## MEMORANDUM

TO: Jamie Lewis Keith, General Counsel

FROM: Mika Brewer, Project Manager

DATE: December 22, 1993

RE: Review of Massachusetts Air National Guard License for Otis AFB

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This past week John Civilinski and I met with Col. Ernest Keating of the Massachusetts Air National Guard. Col. Keating has requested that the Commonwealth extend lease DACA51-75-293 (the lease) with the United States Air Force for an additional 10 years. The lease is one of three between the Commonwealth and the United States Air Force for Otis Military Reservation, the other two leases expire in 2026. The lease applies to approximately 2217 acres of land at Otis. The United States Air Force has licensed this land back to the Massachusetts Air National Guard via License DACA51-3-84-50 (the license).

In addition to wanting the lease to have a similar termination date as the other Commonwealth/U.S. Air Force leases, Col. Keating wishes to construct a new wastewater treatment facility for the entire Otis Military Reservation on this property. Estimated project costs are approximately \$25,000,000. The project has been approved and monies appropriated by the Feds. Col. Keating's problem is that the Feds require site control for at least 30 years before committing federal resources to a capital improvement project. A 10 year lease extension will extend the lease to June 30, 2026, thereby allowing Col. Keating to activate Federal funds.

Please review the attached lease and license and recommend a course of action to expedite extension of the lease between the Commonwealth and the United State Air Force. If you have questions or need additional information please call me at 727-8090. I appreciate your attention to this matter. Happy Holidays.





THE COMMONWEALTH OF MASSACHUSETTS  
SPECIAL MILITARY RESERVATION COMMISSION  
UNIFIED ENVIRONMENTAL PLANNING OFFICE  
CAMP EDWARDS, MA 02542-5003

MG Raymond A. Vezina  
The Adjutant General, Chairman  
MG Alan T. Reid  
Commander MA ANG, Commissioner  
BG William A. Quigley  
State Quartermaster, Commissioner

(508) 968-5824  
FAX (508) 968-5818  
DSN 667-5824

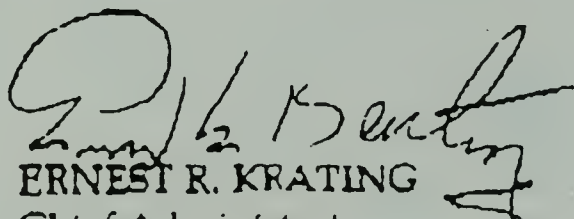
UEPO

7 June 1994

MEMORANDUM FOR COLONEL SAM LUNDGREN, CIVIL ENGINEER,  
ANGRC, Building 3500, Andrews AFB

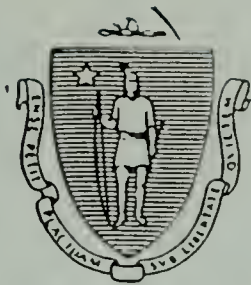
SUBJECT: Otis ANGB Lease Extension

1. Please be advised that the Special Massachusetts Military Reservation Commission has concurred in the 10 year extension of the lease from the Commonwealth of Massachusetts to the United States of America for the portion of land on which Otis ANGB is situated.
2. The Adjutant General has forwarded this to the Commonwealth of Massachusetts' Department of Capital Planning and Operations (DCPO), the state agency charged with granting leases on behalf of the Commonwealth.
3. DCPO is processing the lease extension at this time.
4. Should you have any questions regarding this matter, please do not hesitate to contact me at DSN 557-5824.

  
ERNEST R. KRATING  
Chief Administrator  
Unified Environmental Planning  
Office

CF:  
MG Vezina  
MG Reid  
BG Quigley  
LTC M. Murray





THE COMMONWEALTH OF MASSACHUSETTS  
SPECIAL MILITARY RESERVATION COMMISSION  
UNIFIED ENVIRONMENTAL PLANNING OFFICE  
CAMP EDWARDS, MA 02542-5003

MG Raymond A. Vezina  
The Adjutant General, Chairman  
MG Alan T. Reid  
Commander MA ANG, Commissioner  
BG William A. Quigley  
State Quartermaster, Commissioner

(508) 968-5824  
FAX (508) 968-5818  
DSN 557-5824

27 September 1994

MEMORANDUM FOR MG RAYMOND A. VEZINA, THE ADJUTANT  
GENERAL, Massachusetts


SUBJECT: 102FW Lease

1. The following are some comments from Steve Hines, DCPO, on the lease extension.

- DPCO interprets that the Governor's signature is required and is appropriate to affix as a result of their review. Steve suggests that I forward the lease to Mr. Russell D. Ames, Assistant Chief of Staff in the Governor's office, through you. In turn, Russ will handle the process of getting the Governor's signature. It may be that the lease will need to be run by the Governor's legal council (not the Attorney General's office) more as a formality. He has sent Russ a note of assurance that the lease language is correct and in order. (See attached.)

2. I believe we are getting closer to wrapping this up, however, I could use your help in staying in touch with Russ Ames to close the loop. I really don't want to go into the Scoping Session on 2 November with this an open issue. I'll appreciate your help.

Atch

  
ERNEST R. KEATING  
Chief Administrator  
Unified Environmental  
Planning Office

CF:  
MG Reid  
BG Quigley  
COL Volpe





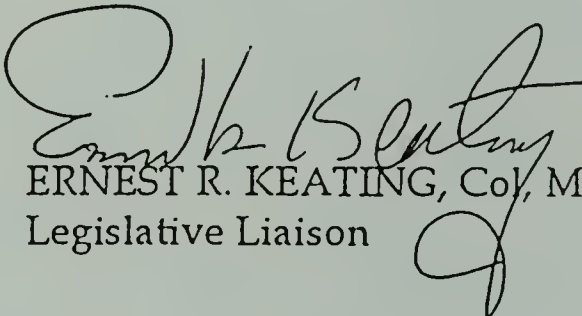
DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS MASSACHUSETTS AIR NATIONAL GUARD (HQB)  
OTIS AIR NATIONAL GUARD BASE, MA 02542-8001

13 January 1995

Mr. Russell D. Aims  
Assistant Chief of Staff  
Office of the Governor  
State House, Room 360  
Boston, MA 02133

Dear Mr. Aims,

It is unfortunate that the lease agreement for Otis Air National Guard Base was not forwarded to you before last week. I'll wait a few more days prior to calling you for the status of signatures. I would appreciate your coordination and expeditious resolution in gaining the Governor's signature. The lease extension is affecting a number of other important issues. Thank you for your assistance in this matter.

  
ERNEST R. KEATING, Col, MA ANG  
Legislative Liaison



1 5 1 6 0

DEPARTMENT OF THE ARMY  
Corps of Engineers  
New York District

SUPPLEMENTAL AGREEMENT  
between  
THE COMMONWEALTH OF MASSACHUSETTS  
and  
THE UNITED STATES OF AMERICA

Lease No. DACA51-5-75-293  
Modification No. 4

THIS SUPPLEMENTAL AGREEMENT NO. 4 made and entered into this  
11th day of April, 1995, to Lease Contract No. DACA51-5-  
75-293 dated 1 July 1974 by and between THE COMMONWEALTH OF  
MASSACHUSETTS, whose address is Military Department, Camp Curtis  
Guild, 25 Haverhill Street, Reading, Massachusetts 01867-1999,  
hereinafter called the "Lessor," and THE UNITED STATES OF AMERICA,  
hereinafter called the "Government."

WITNESSETH THAT:

WHEREAS, by lease dated 1 July 1974 the Lessor leased to the  
Government approximately 19,427.23 acres of land more or less,  
together with certain improvements thereon, comprising seven (7)  
parcels in the County of Barnstable, Massachusetts, known and  
designated as Parcel A (11,887 acres in the Towns of Sandwich,  
Bourne and Falmouth); Parcel B (6,431 acres in the Towns of  
Sandwich and Bourne); Parcel C (1,090 acres in the Towns of  
Sandwich and Bourne); Parcel D (6.54 acres in the Town of  
Sandwich); Parcel E (2.65 acre Co-Use Access Road in the Town of  
Sandwich, of which 0.23 acre is included in Parcel D); Parcel F  
(7.92 acre Drainage Easement Right-of-Way in the Town of  
Sandwich); and Parcel G (2.33 acre Safety Easement in the Town of  
Sandwich, of which 0.58 acre is included in Parcel D through G,  
for the term beginning 1 July 1974 through 30 June 2016 at a  
rental of \$1,491,894 for the period 1 July 1973 through 30 June  
1974 and \$71,533.04 per annum for the period 1 July 1974 through  
30 June 1979 with the rental thereafter to be negotiated between  
the parties, as more particularly set forth in said Lease; and

WHEREAS, by Supplemental Agreement No. 1 dated 15 August  
1975, the Lease was amended, effective 1 July 1975, to reduce the  
size of Parcel A by 749.29 acres, more or less, while retaining  
for the Government the right to use, maintain, repair, replace and  
improve certain Government-owned installed utility poles, lines  
and cables in, over and across the relinquished land; and



WHEREAS, by Supplemental Agreement No. 2 dated 3 November 1975, the Lease was amended to delete 5.68 acres in two separate areas of Parcel B from the Government's leasehold; and

WHEREAS, by Supplemental Agreement No. 3 dated 1 July 1976 the Lease was amended to provide for the following:

a. deletion of Parcels A, B, C and D from the Government's leasehold and addition to the Government's leasehold of three (3) parcels in the County of Barnstable, Massachusetts, known and designated as Parcel H (Main Base, Otis Air Force Base, 1,994 acres in the Towns of Sandwich, Bourne and Falmouth); Parcel I (housing area west of U.S. Coast Guard Support Area, 203 acres in the Town of Bourne); and Parcel J (retained for railroad, 0.69 acre in the Town of Falmouth);

b. amendment of Paragraph 3 of said Lease to reflect the Government's new Fiscal Year by substituting 30 September 2016 for 30 June 2016;

c. deletion of the language in Paragraph 4 of said Lease and substituting the following language in lieu thereof: "The rental for the aforementioned retained areas shall be One Dollar (\$1.00) for the entire term of this Lease.";

d. the retention by the Government of title to all utility systems located in lands relinquished by Paragraph 1 of said Supplemental Agreement No. 3 and for the retention by the Government of the right to enter, use, service, maintain, repair, replace, remove and improve the Government-owned installed utility system in, over, through and across the lands relinquished by said Paragraph 1; and

e. deletion of the language in Paragraph 7 of said Lease and for the substitution therefor of certain language pertaining to the Government's responsibility for the maintenance, management and operation of the leased premises;

and

WHEREAS, the parties hereto wish to extend the term of the Lease for an additional ten (10) years.



NOW, THEREFORE, in consideration of the mutual benefits to be derived hereunder, the parties hereto do hereby amend this Lease further in the following respects and in these respects only:

1. The date "30 September 2016" in the last clause of Paragraph 3 of said Lease is deleted and the date "30 September 2026" is substituted in lieu thereof.
2. All other terms and conditions of the aforementioned Lease No. DACA51-5-75-293, as amended, are hereby ratified and, except as amended by this Supplemental Agreement No. 4, shall be and remain the same.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

THE COMMONWEALTH OF MASSACHUSETTS  
Lessor

WITNESS:

Russell S. Adams

200 360 State House  
Address  
Boston MA 02133

By: William F. Weld  
WILLIAM F. WELD  
Governor

THE UNITED STATES OF AMERICA  
Lessee

By: William E. Edwards  
WILLIAM E. EDWARDS  
Acting Director, Air Force  
Title: Real Estate Agency

Approved as to Form:

Assistant Attorney General





THE COMMONWEALTH OF MASSACHUSETTS

MILITARY DIVISION

THE ADJUTANT GENERAL'S OFFICE

50 MAPLE STREET, MILFORD, MA 01757-3604

In reply refer to

JUN - 9 1998  
June 3, 1998

James R. Milkey  
Assistant Attorney General  
200 Portland Street  
Boston, MA 02114

Reference: Massachusetts Military Reservation Lease and License Extensions

Dear Mr. Milkey,

In response to your May 19, 1998 letter, I am providing the requested synopsis of the history of the 1995 lease (and subsequent license) extension involving the US Air Force and Massachusetts Air National Guard at the Massachusetts Military Reservation (MMR). The record is quite straight forward.

Correspondence extending back to 1992, between EOEA and the Massachusetts National Guard detailed the lease extension waiver granted to the earlier Waste Water Treatment Facility and reinforced the continuing need for a total minimum remaining lease duration of 25 years for future projects. This well discussed and fiscally sensible policy mandates a minimum remaining 25 years on related leases before the Air Force will invest funds for such new facilities. This business practice is not confined to the Air Force nor unique to the MMR.

In 1993, military construction projects totalling \$8,231,972 of Federal funding were prioritized and approved for construction at the MMR. On September 9, of that year, the Executive Office of Environmental Affairs (EOEA) issued certificates for the two projects, a combat communications group complex and a medical training facility. EOEA certification of the two projects noted that each would have minimal environmental impact and did not require preparation of an Environmental Impact Review.

A process of longer extensions - up to fifty years - is often employed to reduce the frequency of related actions. In this situation, in large part due to listening to public input calling for the lease at the MMR to be brought onto the same timelines (1992 letter from the Association for the Preservation of Cape Cod to the Assistant Attorney General Van Duesen), the National Guard sought only a ten year extension for the two EOEA approved projects. This time length allowed the licenses and leases to the three main activities at the Reservation (Army National Guard, Air National Guard, and Coast Guard) to be brought into confluence while also delivering the necessary minimum 25 year Air Force/Air National Guard lease and license remainder.



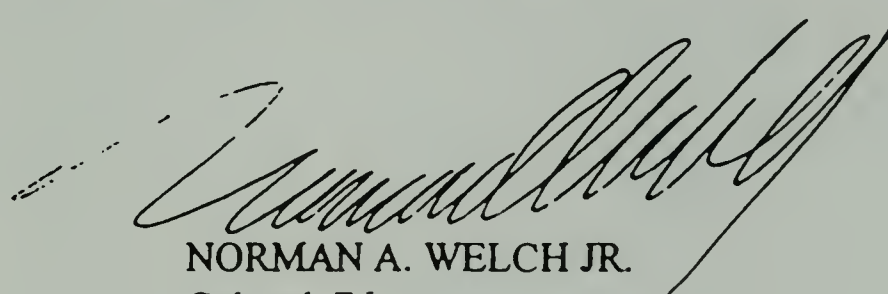
Actions associated with the lease extension were conducted by and between the Corps of Engineers, the National Guard Bureau, the Department of the Air Force, the Massachusetts National Guard, the Division of Capital Plans and Operations(DCPO), and the Executive Office of Environmental Affairs. On June 3, 1994, the Consent Decree was amended by stipulation allowing construction of the two related facilities (three buildings in total). The stipulation, concurred in by the Conservation Law Foundation and entered at the US Federal District Court, Boston, found the projects did not reflect a significant or substantial expansion of the federal activities at the MMR and were not inconsistent with the Consent Decree.

On June 7, 1994, the Massachusetts Military Reservation Commission, in accordance with its roles and responsibilities prescribed in Chapter 33 of the Massachusetts General Laws concurred with the ten year extension request. Related documentation was then forwarded to DCPO for review, then routed back through the Massachusetts National Guard to the Governor.

A review of this history reinforces that the process was applied correctly and the extensions were productive in several senses:

- Allowed construction of over \$8 Million in much needed, Federally funded facilities for our Air National Guard.
- Equated the Air National Guard, Army National Guard, and Coast Guard leave and license timelines at the MMR.
- Accomplished the above with minimal leave extensions, facilitating future public input.

In closing, the intensity of surprise among some concerning the Air National Guard lease/license dates is surprising to many. Those deeply involved in the various MMR community outreach and input groups have a full understanding of the dates. For instance, the Community Working Group providing valuable MMR Master Planning input to the Massachusetts National Guard Master Plan proponentcy has been working from its outset with products, including detailed maps, which clearly cite the correct Air National Guard Lease dates. Nothing (even unintentionally) wrong has been done in this process - by any person or agency. Actions of the Massachusetts National Guard were undertaken in response to guidance and/or input received from the relevant and appropriate state agencies. The facts bear that out. I can be reached at 508-233-6700.



NORMAN A. WELCH JR.  
Colonel, IN  
Assistant Adjutant General





# *The Commonwealth of Massachusetts*

*Executive Office for Administration and Finance*

*Division of Capital Planning and Operations*

*One Ashburton Place*

*Boston, Massachusetts 02108*

ARGEO PAUL CELLUCCI  
GOVERNOR

CHARLES D. BAKER  
SECRETARY

LARK JUREV PALENMO  
COMMISSIONER

TEL: (617) 727-4050

FAX: (617) 727 5363

June 3, 1998

Scott Harshbarger  
Attorney General  
One Ashburton Place  
Boston, MA 02108

Re: Extension of Massachusetts Military Reservation Lease

Dear Attorney General Harshbarger:

Governor Cellucci has asked me to respond to your recent letters regarding the extension of the lease at the Massachusetts Military Reservation ("MMR") with the United States Air Force.

The MMR was established by the Massachusetts legislature in Chapter 196 of the Acts of 1935, which created the Special Military Reservation Commission and authorized it to acquire certain lands in the towns of Sandwich, Bourne, Falmouth and Mashpee for military purposes. The land that comprises the MMR today is owned by the Commonwealth of Massachusetts.

A lease was entered into by the Commonwealth of Massachusetts and the United States Government on July 1, 1974 for a term of one year, and "thereafter from year to year without further notice" until June 30, 2016. In 1985 the United States licensed back to the Commonwealth a part of the leased premises for use by the Massachusetts Air National Guard.

Governor Sargent executed the lease in 1974 pursuant to the authority given the Governor by Massachusetts General Laws Chapter 33 Section 114 which reads as follows:

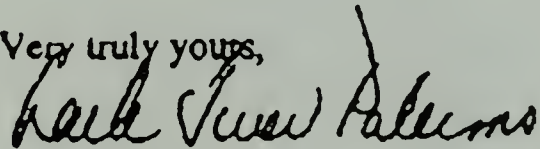
*The governor, with the advise and consent of the council, may lease to or permit to be used by, the armed forces of the United States, military property belonging to the commonwealth, upon such terms and conditions as will fully protect the interests of the commonwealth.*



Chapter 579 of the Acts of 1980 placed in the Commissioner of DCPO certain powers to dispose of real property held in the name of state agencies. The Special Military Reservation Commission, is a "state agency" as defined in Massachusetts General Laws Chapter 7, Section 39A. Chapter 7, Section 40E lists a number of statutes giving various state officials power to acquire and dispose of real property and provides that the DCPO Commissioner shall exercise the powers stated in Chapter 7, "notwithstanding the delegations which the general court has made pertaining to the acquisition, control and disposition of real property, including" statutes listed in Chapter 7, Section 40E. Massachusetts General Laws Chapter 33, Section 114 is not among the statutes listed in Chapter 7 and DCPO determined that the authority given to the DCPO Commissioner by Chapter 7, Section 40E did not divest the Governor of his authority to lease military property to the United States pursuant to Chapter 33, Section 114. In addition, Chapter 33, Section 114 does not include any public notice requirements. We gave this advice to the Governor's office and he executed the extension to the 1974 lease in reliance on this advice.

You should also be aware that DCPO determined that there was at least one recent precedent for the Governor undertaking a transaction of this type. In July, 1989, DCPO transmitted for signature by the United States, a lease for property in the Town of Wellesley for use by the Air National Guard and United States Air Force. This lease was executed by Governor Dukakis pursuant to Massachusetts General Laws Chapter 33, Section 114.

Very truly yours,



Lark Jurev Palermo  
Commissioner

cc: Governor Argeo Paul Cellucci





# *The Commonwealth of Massachusetts*

*Executive Office for Administration and Finance*

*Division of Capital Planning and Operations*

*One Ashburton Place*

*Boston, Massachusetts 02108*

ARGEO PAUL CELLUCCI  
GOVERNOR

CHARLES D. BAKER  
SECRETARY

LARK JUREV PALERMO  
COMMISSIONER

TEL: (617) 727-4050

FAX: (617) 727-5363

June 8, 1998

By Hand

James R. Milkey  
Assistant Attorney General  
Chief, Environmental Protection Division  
Office of the Attorney General  
200 Portland Street  
Boston, MA 02114

Dear Mr. Milkey:

This letter responds to your document request by letter of May 27, 1998 to Commissioner Lark Jurev Palermo of the Division of Capital Planning and Operations ("DCPO"), requesting documents "regarding the circumstances surrounding the extensions of the lease and license [Air Force lease number DACA 51-5-75-293 at Otis Air Force Base], including who was involved, what discussions and/or negotiations occurred, and what, if any, public procedures were followed."

Enclosed are the documents in DCPO's possession which are responsive to your request. The documents indicate that a primary purpose for extending the lease was to satisfy federal prerequisites for federal funding at the Base, such as the environmental improvement of upgrading the wastewater treatment plant.

Please feel free to contact me in connection with this document request.

Very truly yours,

Jamie Lewis Keith  
Assistant Commissioner and  
General Counsel

cc: Lark Jurev Palermo, Commissioner, DCPO



